## Sale of Elephant Ivory in California

Both African and Asian elephants are protected under the U.S. Endangered Species Act (ESA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The U.S. Fish & Wildlife Service is the principle Federal agency responsible for implementing and enforcing the ESA and CITES. Under the ESA and CITES, the Service regulates import and export, as well as interstate and foreign commerce in elephant ivory. California law regulates the sale of elephant ivory within the state.

The sale, importation, and exportation of elephant ivory is contingent on many different rules and regulations. In general, export of raw African and Asian elephant ivory from the United States is prohibited. Import of raw African elephant ivory, with the exception of sport-hunted trophies, has been banned since 1989 following the enactment of the African Elephant Conservation Act (AECA). African elephant ivory can be legally owned or bought and sold within the United States provided it meets ESA requirements and state laws. Worked African elephant ivory acquired before its 1978 ESA listing or antique (over 100 years old) ivory may be imported or exported for non-commercial purposes or, in limited situations, for commercial purposes with a certification from the Service. Prior to the AECA moratorium, African elephant ivory was legally imported to the U.S. for both commercial and non-commercial purposes, thus, under federal law, such ivory can be legally owned and sold, including in interstate commerce. Asian elephant ivory that was purchased prior to its 1976 ESA listing may be sold in intrastate commerce, if allowed under state law, however, the sale or commercial transfer of Asian elephant ivory in interstate and foreign commerce is strictly prohibited.

California Penal Code section 6530 was enacted in 1970 and amended in 1976 to include elephants. This section prohibits the importation, possession with intent to sell, and sale of any parts of specified animals, including elephants. However, an uncodified portion of the statute states that Penal Code section 6530 does not apply to the sale of elephant items imported prior to June 1, 1977. In addition, federal courts have held that Penal Code section 6530 is preempted by federal law with respect to its prohibition on trade in elephant products to the extent trade in elephant products is authorized pursuant to federal regulations or permits. See Man Hing Ivory & Imports, Inc. v. Deukmejian, 702 F.2d 760 (9th Cir. 1983).

Penal Code provisions are typically prosecuted by the offices of locally elected District Attorneys. The Penal Code may be enforced by police officers and sheriff deputies as well as other peace officers throughout the state. Neither the California Fish and Game Code nor state wildlife regulations enforced by the Department of Fish and Game (Department) reference elephants or elephant products. Elephants are not native to California, nor do they reside in the state in the wild. Although the Department expects investigations related to the possession and/or sale of elephant ivory to be led by the U.S. Fish and Wildlife Service, the Department's Law Enforcement Division may provide assistance to the U.S. Fish and Wildlife Service when requested by their Special Agents.

Any questions related to the import/export, sale or possession of elephant ivory or other elephant parts should be directed to the U.S. Fish & Wildlife Service at (800) 344-9453 or their website at <a href="https://www.fws.gov">www.fws.gov</a>. Information regarding enforcement of the Penal Code may be obtained via your local District Attorney's office.